

COMMISSION COMMENT



Spring

2005

Proposed Rule Change to Allow Multiple Trade Names

A public rule hearing will be held on May 16, 2005, at 1:00 p.m. in the Staybridge Room at the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. (Approximately one mile south of the 27th Street Exit off I-80 on the east side of 27th Street.) Amendments are being proposed to Title 299, Chapter 2 of the Commission Rules.

The substantive proposed amendments to Title 299, Chapter 2 will allow a designated broker to operate under more than one trade name. Designated brokers will still only be allowed to operate under one business entity, e.g. a sole proprietorship or a partnership or a corporation or a limited liability company, etc. but the business entity may operate in one or

more trade names. For example: Strader Real Estate, Inc. may have two trade names, Bob Realty and Carl Realty. Note: If operating with multiple trade names out of one location the designated broker will need to establish procedures to assure the public is not misled or confused about with whom the public is working. If the different trade names operate out of separate locations, then, any location other than the main office will need to be licensed as a branch office.

The remainder of the proposed amendments make grammatical and punctuation corrections and delete obsolete language. The full text of proposed amendments begins on page 6.

If you would like to testify with regard to the proposed amendments, you are invited to attend the hearing. If you want to comment but cannot attend the hearing, written comments are welcomed. Any written comments received on or before May 2, 2005, will be made part of the hearing record. Testimony and comments must be limited to the proposed amendments. In addition to the copy of the proposed amendments available in this article, copies of the proposed amendments are available on the Commission's website at: www.nrec.state.ne.us and from the Commission Office.

If you have questions regarding the proposed amendments, contact the Commission Office.

Commission Meeting Schedule

May 16-17Lincoln
June 13-14Lincoln
August 24-25Lincoln
September 22-23Lincoln

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The Nebraska Real Estate Commission often solicits articles from outside experts or reprints articles with permission. While we feel that these articles may offer a broader perspective and will be of interest to the reader, it should be remembered that the views expressed are those of the author and not necessarily those of the Commission.

DIRECTOR'S DESK

LEGISLATION UPDATE

LB88 which the Commission drafted and which was introduced by Senator Dennis Byars was passed by the Legislature and approved by the Governor. It will become effective 90

days after the Legislature adjourns later this Spring. Therefore, the new provision will become effective on or about September 1, 2005.

The new amendment to the Agency Relationships statute allows an exception to the inclusion of specific terms of compensation in an agency agreement with a builder. The amendment will allow the terms of compensation in a written agency agreement to be general in nature but requires the specific terms of compensation between the builder and the limited seller's agent to be established on a specific new construction property on or before the builder's acceptance of a contract to sell.

It is important to note this exception only applies to transactions between a builder and his/her limited seller's agent on a new construction property. IT DOES NOT APPLY TO ANY OTHER TRANSACTIONS.

Here is the exact wording of the subsection which was amended:

Neb.Rev.Stat§76-2422(2) "Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell."

If you have any questions, please contact the Commission Office.



**MEET THE REAL ESTATE
COMMISSION STAFF**

The Real Estate Commission Staff is here to serve the public and the licensee population. It is our goal to be helpful and forthright in a courteous and professional manner. We hope that when you contact our office, you always receive useful, accurate information and/or are referred to the proper authority.

Following is a communication resource to assist you when contacting our office. If the indicated person is unavailable to take your call, please share the purpose for the call and your call will be routed to someone else who can help you.

We take pride in having a skilled staff, if you have comments or suggestions as to how we may better serve you, please contact our office.

COMMUNICATIONS GUIDE

Ask for person indicated if you have questions in the following areas.

- Commission Meeting Information . . . Heidi Burklund
InfoTech@nrec.state.ne.us
- Complaint Procedures Terry Mayrose
DDEnf@nrec.state.ne.us
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Inquiries Melanie Patrick-Heather
EdEnf@nrec.state.ne.us
- Curriculum Design (Education &
Instructor Approval) Teresa Hoffman
DeputyD@nrec.state.ne.us
- Errors and Omissions Insurance
Inquiries Teresa Hoffman
DeputyD@nrec.state.ne.us
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Requests General Staff
- License Applications Process Melanie Patrick-Heather
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- Licensing and Education
Requirements Teresa Hoffman
DeputyD@nrec.state.ne.us
- New Licenses in Process Marilyn Masters
Applic@nrec.state.ne.us
- Specialized Registrations Monica Wade
Finance@nrec.state.ne.us
- Transfer of License Tawny Snider
LicTsf@nrec.state.ne.us
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**Disciplinary Actions Taken by
the Real Estate Commission**

(Does Not Include Cases on Appeal)

2004-045 – Elisabeth Jensen vs. Jane Hartman-Heimbouch, Salesperson. Hearing held February 15th, 2005. License censured; plus an additional three (3) hours of continuing education in the area of License Law to be completed by May 28, 2005. [Violated Neb. Rev. Stat. § 81-885.24(2) and Neb. Rev. Stat. § 81-885.24(29) by placing false and misleading advertising in the Multiple Listing Service and in the local newspaper regarding the amenities of the listed property, and relying solely on the records of the County Assessor for square footage. These actions constitute negligence, incompetence or unworthiness to act as a salesperson.]

February 28, 2005

2003-038 – Commission vs. Mark L. Stecker, Broker. Stipulation & Consent Order. License suspended for two (2) years effective upon renewal of the license; plus an additional six (6) hours of continuing education, including three (3) hours in the area of farm brokerage and three (3) hours in the area of farm management to be completed prior to the end of the two (2) year suspension period, or the suspension will remain in effect until the successful completion of the courses. [Violated Neb. Rev. Stat. § 81-885.24(3) by failing to account for and remit any money coming into his possession belonging to others; Neb. Rev. Stat. § 81-885.24(4) by co-mingling the

money or other property with his own; Neb. Rev. Stat. § 81-885.24(5) by failing to maintain and deposit into a separate non-interest bearing checking account all money received; Neb. Rev. Stat. § 81-885.24(22) by making a substantial misrepresentation; Neb. Rev. Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a broker; Neb. Rev. Stat. § 76-2421(1) by failing to provide to the landlord a copy of the current brokerage disclosure pamphlet and disclose in writing the types of brokerage relationships being offered; and Neb. Rev. Stat. § 76-2422(6) by failing to enter into a common law agency agreement with the landlord which specified the agent's duties and responsibilities.]

January 7, 2005.

2004-005 – Commission vs. Buree Stovall, Broker. Hearing held November 18th, 2004. License revoked. [Violated Neb. Rev. Stat. § 81-885.21(2) by failing to notify the Commission of a trust account and provide the name of the account on forms provided by the Commission; Title 299 NAC Chapter 3-001 by failing to preserve for five years records relating to any real estate transaction; Title 299 NAC Chapter 3-002 by failing to maintain a book-keeping system; Title 299 NAC Chapter 3-006 by failing to transfer earnest money to the listing broker;

(Continued on page 8)



We've Got Mail!!

E-mail, that is. The Commission is focusing on technology. Our goal is to enhance our accessibility and service to the Public and to our Licensee Population. With that in mind, let us call your attention to the addition of e-mail addresses in the "Communications Guide" located on page 3. If you have any questions, please feel free to contact us by phone, mail, or e-mail, so that we may be of assistance.



Issues of Identity Theft

Involvement in the real estate business virtually guarantees that a licensee will collect or hold personally identifying information such as names and addresses, social security numbers, credit card numbers or other account numbers about customers, clients or other employees. If this information falls into the wrong hands, it could put these individuals at risk for identity theft. There is no specific statute pertaining to the real estate industry that addresses identity theft. However, specific statutes and regulations may restrict disclosure of consumer information in certain contexts and require entities that maintain this information to take reasonable steps to ensure the security and integrity of the data.

The Federal Trade Commission (FTC) provides guidance to businesses about information security risk and the precautions to take to minimize disclosure of personal information or protect personal information. The FTC's website (www.ftc.gov) is a great resource for brochures on reducing security risks to your computer systems, preventing security breaches, educating companies on managing data compromises and identifying when it would be appropriate for an entity to notify law enforcement and consumers in the event of a breach of personal information. The website has a whole section devoted to identity theft and precautions.

Identity thieves may obtain personal information from businesses by stealing records or information while the thief is on the job, by bribing an employee who has access to the records, by hacking into the computer records or by conning information out of employees. Ident-

ity thieves may rummage through the trash of businesses, obtain credit reports by abusing the employer's authorized access or by posing as a landlord or someone else who has a legal right to the report.

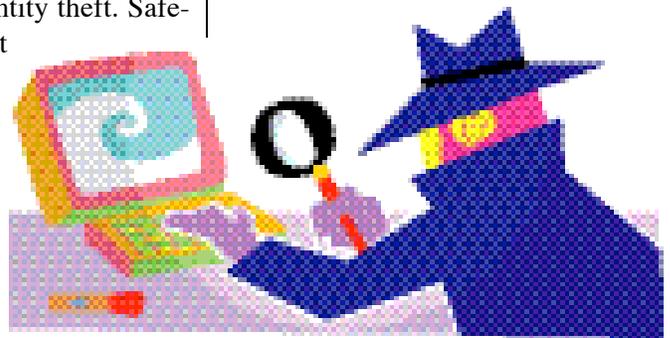
Guidance from the FTC discusses keeping personal information out of the public domain of the business. For example, in the real estate industry client files or listings should not be maintained in the reception area. Loose papers containing personal information should not be left on your desktop for people to see when you are away from your desk. If you have documents in your vehicle, keep the documents in a folder and the vehicle locked.

Common sense safeguards should be implemented in your business to protect client or consumer information. Safeguards include reminding your employees or other staff of the confidential nature of the documentation and the risk of identity theft, maintaining a filing system so that documents are placed in a file folder in a filing cabinet, and not relating personal information over the telephone without verifying that the individual requesting the information has the need and authority to obtain the information.

Implementing precautionary measures when dealing with documents can save clients, customers and employees from identity theft. Safeguards may protect your business from being held accountable for allowing the identity theft to occur. Examples of statutes which address the dissemination of

information include: the Fair Credit Reporting Act which focuses on maintaining the accuracy and efficiency of the credit reporting system and prohibits the distribution of consumer reports by consumer reporting agencies; the Gramm-Leach-Bliley Act which imposes privacy and security obligations on certain financial institutions including check cashing businesses, data processors, mortgage brokers, non-bank lenders, personal property and real estate appraisers, tax preparers, courier services and retailers that issue credit cards to consumers; the Federal Trade Act which prohibits unfair or deceptive acts or practices affecting commerce and allows the Federal Trade Commission (FTC) to prosecute companies for deceptive security claims; and the 1998 Identity Theft Assumption and Deterrence Act which provides the FTC with the specific role in combating identity theft. Under the Identity Theft Act, the FTC has implemented a program focusing on collecting complaints and providing victim assistance as well as providing outreach and education to consumers and businesses.

If you have specific concerns about which, if any, of the numerous laws apply, you should contact your legal counsel.



News from the Postal Service

(Editor's Note: A recent discussion raised the question of whether it was ever appropriate to place anything in someone's mailbox, whether it be a commercial address or a residential address, a client's or a friend's. In an effort to research the question, I contacted the Post Master's Office in Lincoln, NE, and spoke with Christy Funcke the Customer Relations Coordinator. We would like to thank Ms. Funcke for supplying us with the answer to our question and additional information we should all keep in mind.)

ONLY MAIL CAN BE PLACED IN MAIL RECEPTACLES

In the Postal Reorganization Act of August 12, 1970, Public Law 91 375, the Congress imposed a mandate upon the United States Postal Service to become self sustaining. The need to protect Postal revenue is at least as important today as it was in 1934, and the statute clearly furthers this purpose.

In addition, many customer mailboxes are not very large. If material not bearing postage could legally be placed into mailboxes, it is reasonable to assume that, from time to time, such matter could completely fill the mailbox and prevent a good deal of mail from being placed within it. In such situations, we would be required to return the undelivered mail to the post office, and service to the owners of the mailboxes would deteriorate.

There might be no practical way, other than resorting to litigation, for owners to prevent their mailboxes from being used to deliver such material, especially if a large number of persons chose to deliver materials into the box. We believe it reasonable to assume that owners who might not object to having a particular item, for example a newspaper, placed into their mailboxes would not want to find themselves unable to prevent their mailboxes from being used to deliver other material. Con-

fronted with what is essentially an "all or nothing" situation, the great majority of mailbox owners would, in our opinion, prefer the existing situation in which materials not bearing postage cannot generally be placed into mailboxes.

We recognize that, from time to time, the statute and the Postal regulations may cause owners of mailboxes to become irritated. When all factors are brought to their attention, however, we hope that the great majority of the public would agree that both the statute and the Postal regulations further the public interest.

The statute contributes to the security of mail in mailboxes. If a person can go to a mailbox and place something into it, he/she can also take something out. Today, if a person other than a Postal employee or a member of the family or an authorized employee opens the mailbox, suspicion should be aroused.

I hope this explanation helps you to better understand the importance of this prohibition and the Federal law.

COULD YOUR MAILBOX USE A "SPRING CLEANING"?

It's spring! The buds are on the trees. The flowers are beginning to bloom. It's time to spruce things up around the house and yard, to put winter behind us and make everything look its best.

As you put your cold-weather clothes into storage and check the outside of the house for necessary repairs, don't forget to take a look at your mailbox. In many cases, the mailbox is the first thing people see when they come to visit. An attractive, well-maintained mailbox adds to the appearance of your home or

business and our community, and protects your daily mail from the elements.

Here are some spring cleaning tips for you and your mailbox.

- If your mailbox is mounted on a pole or post, check its stability and make sure it is properly anchored.
- Your mailbox identifies your address, not only for the letter carrier but for the police, the fire department, emergency workers and other service providers. Make sure your address appears on both sides of the mailbox so people who need to find you can do so, and so can your mail.
- Check the door and its hinges. Make sure it closes properly to keep your mail in and the wind and rain out.
- Do you see any sharp edges or nails sticking out? Protect your own hands, as well as those of your letter carrier by filing them off. Also sand and repaint or replace your mailbox if it's rusty-you don't want to have to get a tetanus shot, and neither does your letter carrier.

The Postal Service requires approved traditional or contemporary curbside mailboxes whenever a mailbox is newly installed or replaced. You can find them in most hardware stores. You may use a custom-built curbside box if the postmaster gives prior approval and if the mailbox generally conforms to the same specifications as approved manufactured mailboxes. Contact us [the Postal Service] before erecting a custom-built mailbox.

If you have questions or want more information about mailboxes, come see us at your local Post Office or call 800-ASK-USPS (800-275-8777).

Title 299 – NEBRASKA REAL ESTATE COMMISSION

Chapter 2 – BUSINESS PRACTICES; EMPLOYMENT OF SALESPERSON OR ASSOCIATE BROKER; ADVERTISING; SOLICITING LISTINGS OR REPRESENTATION; TRANSMISSION OF WRITTEN OFFERS TO OWNER; CLOSING REAL ESTATE TRANSACTIONS; GOOD FUNDS; REPRESENTING ANOTHER BROKER; RETENTION OF SIGNS; BRANCH OFFICES.

001 It shall be presumed that a duly licensed broker whose principal business is other than that of a real estate broker is unable to supervise licensed employees, and said broker shall not be allowed to employ a real estate salesperson or an associate broker until such presumption is overcome by satisfactory evidence to the contrary.

002 Each broker shall record with the Commission the type of business form under which the broker is doing business, i.e., sole proprietorship, general or limited partnership, ~~or~~ corporation, limited liability company, or any other entity authorized by law under which a broker may be operating a real estate business, and the legal name of such entity if it is not a sole proprietorship. A broker may operate only under one business entity. In addition, the broker shall record with the Commission ~~the~~ all names under which the broker will be conducting business, ~~and if such is a trade name, it~~ All trade names shall be recorded with the Commission only after registration with the Secretary of State's Office.

003 Advertising shall include all forms of identification, representation, promotion, and solicitation disseminated in any manner and by any means of communication to the public for any purpose related

to licensed real estate activity. All advertising shall be under the direct supervision of the broker, and in the name the broker is conducting business as recorded with the Commission. Advertising which is contrary to Sections 003 to 006 of these regulations shall constitute misleading or inaccurate advertising under Section 81-885.24(2) of the Nebraska Real Estate License Act.

003.01 Each broker who is operating as an independent broker or sole proprietorship, without being a corporation or limited liability company or filing a trade name, shall advertise in his or her name as recorded with the Commission and include the word(s) "Broker" or "Real Estate Broker", e.g. Sara Stone, Broker or Sara Stone, Real Estate Broker.

003.02 Each broker, when operating under a franchise, shall clearly set forth in all advertising, in addition to the franchise name, the name under which the broker is doing business as is recorded with the Commission and, if applicable, registered with the Secretary of State.

003.03 Each broker who is operating under ~~a~~ one or more trade names as registered with the Secretary of State and recorded with the Commission will advertise in the trade name(s) as recorded. The broker is not required to identify all trade names on each advertisement but must advertise, without exception, in the name of one of the trade names as registered with the Secretary of State and as recorded with the Commission. This section applies to independent brokers, sole proprietorships, franchises, corporations, partnerships, limited liability companies, or

any other entity authorized by law under which a broker may be operating a real estate business.

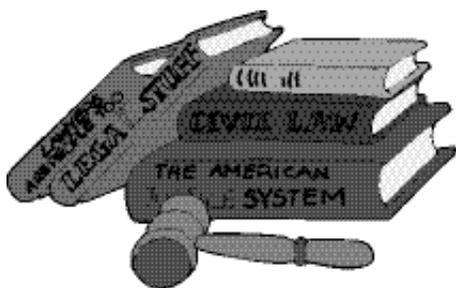
003.04 Each broker who is operating under a corporation will advertise in the name of the corporation as registered with the Secretary of State and recorded with the Commission. If the corporation also registers ~~a~~ one or more trade names with the Secretary of State, such trade name(s) shall be recorded with the Commission, and the corporation may advertise in either the corporate name or the trade name(s).

003.05 Each broker who is operating under a limited liability company will advertise in the name of the limited liability company as registered with the Secretary of State and recorded with the Commission. If the limited liability company also registers ~~a~~ one or more trade names with the Secretary of State, such trade name(s) shall be recorded with the Commission, and the limited liability company may advertise in either the limited liability company name or the trade name(s).

003.06 If registered and recorded names have in their titles, "Co.", "Inc." or the like, such designations may be excluded from advertising, ~~provided;~~ that such exclusion is likely to neither deceive nor confuse the public with regard to the identity of the real estate business being advertised.

004 A broker shall not advertise to sell, buy, exchange, rent, or lease real property in a manner indicating that the offer to sell, buy, exchange, rent, or lease such real property is being made by a private party not engaged

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Title 299 Chapter 2 (Cont'd)

in the real estate business, and no advertisement shall be inserted in any publication where only a post office box number, telephone number, or street address appears.

005 Every salesperson, associate broker, and broker is prohibited from advertising under his or her own name the offering for sale, purchase, or exchange of any real property unless he or she is the owner thereof. Every licensee, when advertising his or her own property for sale, purchase, or exchange must disclose in such advertising that he or she is a licensed real estate salesperson, associate broker, or broker.

006 Every licensee is prohibited from soliciting or attempting to secure listings or to represent a purchaser or tenant without first advising the owner or prospective purchaser or tenant that he or she is a licensee, and that he or she is engaged in the real estate business.

007 In the event that more than one written offer is made before the owner has accepted an offer and closed on that offer, any other written offer presented to the licensee, whether by a prospective purchaser, an agent of a prospective purchaser, or a cooperating broker, shall be transmitted forthwith to the owner for his or her consideration.

008 A salesperson or associate broker shall not participate in the closing of any real estate transaction except under the supervision and with the consent of the broker under whom such salesperson or associate broker is licensed. A broker shall not authorize any person who is not licensed as a salesperson or associate broker to conduct the closing of a real estate transaction. ~~Provided, that~~ This shall not prevent an unlicensed person, such as a closing secretary, from doing the preparatory work for

the closing, subject to the approval of the licensee conducting the closing; and does not apply to real estate closing agents authorized under Neb. Rev. Stat. 76-2,121 et seq.

009 A broker closing a real estate transaction shall be in compliance with Neb. Rev. Stat. Sections 76-2,121 through 76-2,123.

010 The consent required from the ~~broker employing, i.e. employing~~ broker, for an associate broker or salesperson to represent another real estate broker or to accept a commission or other valuable consideration from anyone other than the employing broker as set forth in Neb. Rev. Stat. 81-885.24(7) and (8), respectively, shall be given in writing by the broker in advance of the licensee representing the other broker or the acceptance of the commission or other valuable consideration from the other party. A copy of the consent shall be maintained by the employing broker for five years following the date of such consent.

011 The word "Placing..." as used in 81-885.24(11) of the Nebraska Real Estate License Act shall also be construed to mean the retention of such sign. Written authorization is required to place and retain a sign, and the sign must be removed within a reasonable period of time after the termination of such written authorization.

012 A branch office is any location, other than the main office of a real estate business, where: 1) one or more licensees spend a substantial amount of time transacting real estate business requiring a license; and 2) such licensee(s) advertises that they can be contacted for real estate business purposes; and 3) such licensee(s) maintains what would, in the normal business context, be considered a business office. Nothing in this Section should be construed to include the advertising of a home phone number and address by a

licensee in the alphabetical listing of subscribers section, or white pages, of the telephone directory to come within the branch office definition. A ~~Model Home~~ home utilized as office on a temporary basis would not be considered a branch office.

013 A real estate broker, who is not otherwise involved in the real estate transaction before a written agreement has been entered into for the purchase, sale, or exchange of the real estate, may close the real estate transaction as long as the broker complies with all provisions of the Nebraska Real Estate License Act and Rules of the Commission.

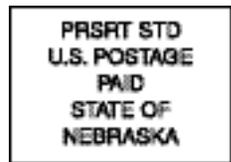
013.01 For the purpose of 013 above, the word "close" refers to services as an independent party to perform the ministerial actions necessary to complete the transaction, which may include the receipt and disbursement of funds. When providing only the above ministerial actions, the broker shall disclose, in writing, to all parties to the transaction, prior to the closing of the transaction, that the broker is only providing this ministerial service and is not acting as an agent for either party. The disclosure shall be signed by both parties and a copy shall be maintained in accordance with 299 NAC 3-001.

013.02 Whenever a broker participates in a real estate transaction before a written agreement has been entered into for the purchase, sale, or exchange of real estate, the broker must fulfill the applicable obligations of a broker to the seller and the buyer in accordance with the provisions of the Nebraska Real Estate License Act and the Rules of the Commission.

Laws 1973, LB 68, §10; RS 1943, §81-885.07 (5) R. S. Supp., 1974. Effective date September 2, 1973.

Laws 1994, LB 1275, §3; RS 1943, §76-2,123 R.S. Cum. Supp., 1994. Effective date July 16, 1994.

Return Service Requested



(Continued from page 3)

Disciplinary Actions (Cont'd)

Title 299 NAC Chapter 5-033.10 by failing to identify in writing to the seller those categories of costs the seller will be expected to pay at closing; Title 299 Chapter 5-003.11 by failing to identify in writing to a purchaser those categories of costs the purchaser will be expected to pay at closing; Title 299 NAC Chapter 5-003.14 by failing to deposit any funds received as earnest money within 48 hours; Title 299 Chapter 5-003.14 effective September 3, 2002, failing to deposit any funds received as earnest money within 72 hours; Title 299 NAC Chapter 5-003.24 by failing to assure a copy of the Seller Property Condition Disclosure Statement was delivered to the purchaser; Neb. Rev. Stat. § 76-2421(1) by failing to provide a written copy of the current brokerage disclosure

pamphlet and to disclose in writing the types of brokerage relationships being offered; Neb. Rev. Stat. § 76-2422(4) by acting as a dual agent without first obtaining the written consent of the seller and buyer; Neb. Rev. Stat. § 76-2422(2) by acting as an agent of the seller without enter-

ing into a written agency agreement with the seller and by failing to have a fixed date of expiration in a written agency agreement; Neb. Rev. Stat. § 81-885.24(29) by demonstrating negligence, incompetency or unworthiness to act as a broker.]

December 7, 2004.

